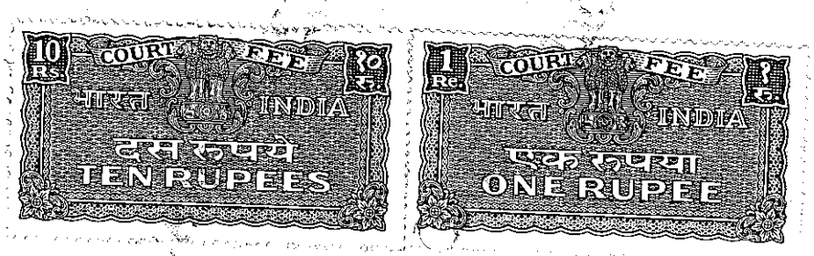


(83)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. No. 732/2002

APPELLANTS :-

1. Smt. Mukta Bai, w/o. Late Chhotu Shudro, aged about 32 years.
2. Parmeshwar s/o. Late Chhotu Shudro, aged about 10 years (student).
3. Prakash s/o. Late Chhotu Shudro, aged about 8 years (student).
4. Basant s/o. Late Chhotu Shudro, aged about 6 years (student).
5. Narayan s/o. Samo Makhul, aged about 70 years.
6. Yashodra Bai w/o. Narayan, aged about 65 years.

- Appellant No. 2 to 4 are minors represented by their own mother Appellant No.1.

- All are r/o. Village Pandaripani, Mohalla - Dani - Munda, Police Station house & Tah.- Kunkuri, Dist. Jashpur (C.G.)

VERSUS

RESPONDANTS :

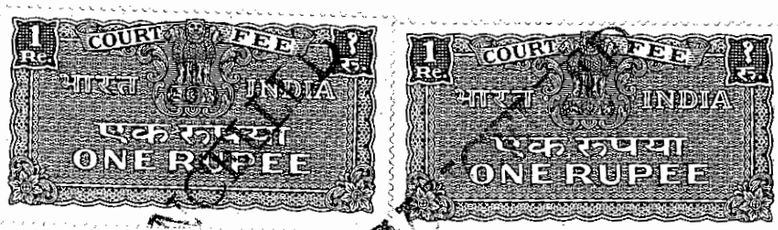
1. Satyanarayan Gupta, s/o. Ram Prasad Gupta.

1a . Ramesh Chandra, s/o. Ram Prasad Gupta, aged about 40 years.

1b. Krishna Kumar Gupta, s/o. Ram Prasad Gupta, aged about 38 years.

All are r/o. Village Bag Bahar, P.S.H. Bag Bahar, Tah.- Kunkuri, Dist.– Jashpur (C.G.) .

2. Drigpal, s/o. Karnuram, Driver.
R/o. Village Sahaspur, P.S.H. Pharsa Bahar, Tah.- Kunkuri, Dist.– Jashpur (C.G.) .



3. Branch Manager, the Oriental Insurance Company Limited, Raigarh (C.G.), through area manager, Oriental Insurance Company Limited, Korba (C.G.)

MEMO OF APPEAL U/S 173 OF M.V. ACT 1988

A.F.R

M.A. NO. 732 OF 2002

Smt. Mukta Bai & others

-Versus-

Styanarayan Gupta & others

JUDGMENT post for 8.10.2002.

Sd/-
Fakhruddin
Judge

(22)

M.A. NO. 732 OF 2002

Smt. Mukta Bai & others

-Versus-

Satyanarayan Gupta & others

Appellants by Smt. Meena Shastri, Advocate.

Respondent No.3 by Shri Prashant Mishra, Advocate.

Shri N.K. Agarwal, Advocate appeared to assist the Court as amicus curiae.

JUDGMENT

By Justice Fakhruddin.

1. This appeal is against the award dated 5.7.2000 passed in Claim Case No. 14/2002 whereby the Claims Tribunal though finding the legal heirs of the deceased entitled to get award of 'no fault liability' awarded only Rs. 25,000/- and the owner and insurance company were directed to pay jointly and severally only Rs. 25,000/-.

2. Learned counsel for the appellants submits that the Motor Vehicles Act, 1988 has been amended by Act No.54 and under the provisions of Section 140 of the Motor Vehicles (Amendment) Act, 1994 the amount of no fault liability in the death cases by the use of motor vehicle has been enhanced from Rs. 25,000/- to Rs. 50,000/- and therefore the Claims

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Tribunal has erred in law in awarding Rs. 25,000/- to the appellants.

3. It is stated that after coming into force of The Repealing and Amending Act, 2001 (Act No. 30 of 2001) some of the Claims Tribunal have started awarding Rs. 25,000/- towards award of no fault liability in the death cases by the use of motor vehicle. As per the Act, 2001 the Amendment Act 1994 has been repealed as a whole but Section 4 of the Act, 2001 is saving clause, which is quoted below:

> *"**4. Savings.**- The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;*
>
> *and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title ,obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing;*
>
> *nor shall this Act affect any principal or rule of law, or established jurisdiction, from or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed;*
>
> *nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability,*

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right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

4. It is, however submitted that some misunderstanding has crept after coming into force of the Act, 2001. Shri Prashant Mishra, learned counsel representing the Insurance Company (Respondent No.3) very fairly submitted that the Insurance Company has sought legal opinion in this regard and the legal opinion is that "all the amendments and changes brought into force by, The Motor Vehicles (Amendment) Act of 1994 (Act No. 54 of 1994) and incorporated into The Motor Vehicles Act of 1988 are still in force.

5. Shri N.K.Agarwal, Advocate present in the Court sought permission to assist the Court and addressed the Court. He referred to a decision reported in AIR 1960 S.C. 89 (Jethanand Betab Vs. The State of Delhi) wherein it is held that: -

"The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Vol.31,at p. 563, thus: "A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos." In Khuda Bux v. Manager, Caledonian Press, AIR 1954 Cal 484, Chakravartti, C.J. neatly brings out the purpose and scope of such Acts. The learned Chief Justice says at p. 486: "Such Acts have no legislative effect, but are

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designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only objects of such Acts which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care,..." It is therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose. "

He submits that the amendments made in the Motor Vehicles Act, 1988 by the Act No.54 of 1994 have been saved by the saving Section 4 of the Act, 2001 and as such they are still operative and are in force.

6. Shri Prashant Mishra, learned counsel representing Respondent No.3 referred to a decision reported in AIR 1962 S.C. 316 (Collector of Customs V. Sampathu Chetty) wherein it is held that:-

"On the other hand, the effect of incorporation is as stated by Vrett L.J. in Clarke v. Bradlaugh, (1881) 8 QBD

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63: "Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second." This is analogous to, though not identical with the principle embodied in S. 6A of the General Clauses Act enacted to define the effect of repeals effected by repealing and amending Acts which runs in these terms:

> *"6A. Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."*

We say 'not identical' because in the class of cases contemplated by S. 6A of the General Clauses Act, the function of the incorporating legislation is almost wholly to effect the incorporation and when that is accomplished, they die as it were a natural death which is formally effected by their repeal. In cases, however, dealt with by Brett L.J. the legislation from which provisions are absorbed continue to retain their efficacy and usefulness and their independent operation even after the incorporation is effected."

7. Shri Prashant Mishra referred to "Principles of Statutory Interpretation" written by Justice G.P.Singh wherein it is opined *"A distinction has also been drawn between a mere reference or citation of one statute into another and incorporation. In the former case as modification, repeal or re-enactment of the statute that is referred will also have effect for*

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the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute."

8. Shri Mishra placed a copy of the letter received by him from the Respondent No.3, which is quoted below:

"We have received queries from various Regional offices regarding the effect of Repealing and Amending Act 2001 on the Motor Vehicles Amendment Act 1994. Vide Repealing and Amending Act of 2001 various Acts have been repealed and one of them is Motor Vehicle Amendment Act 1994. There is a general misconception amongst our offices that since Motor Vehicle Amendment Act 1994 has been repealed, the amendments brought in the Motor Vehicles Act 1988 vide Act of 1994 have automatically gone. We have discussed this issue with various advocates who are of the view that Repeal of Amendment Act of 1994 has not affected the amendments brought about vide said Act. In this regard, we also took opinion from Sh. V.S.Chauhan advocate who has clarified the position in his opinion vide his letter dated 25.2.2002 (copy enclosed for your perusal). It may be observed that vide Section 4 of Repealing and Amending Act,2001 all the amendments changes and provisions brought about by the Motor vehicles (Amendments) Act 1994 have been saved. In simple words all the amendments and changes brought into force by Motor

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Vehicles Amendments Act 1994 are still in force and they are incorporated in the parent Act i.e. Motor Vehicles Act 1988."

9. In view of the discussions made herein above, having heard learned counsel for the parties and considering the facts and circumstances and the material available on record in the opinion of this Court the provisions of The Motor Vehicles (Amendment) Act 1994 stand incorporated in the original Act. In the result, the impugned order passed by the Claims Tribunal is set-aside. It is directed that the Respondent No.3 and the owner shall jointly or severally pay Rs. 50,000/- towards award of no fault liability to the appellant within a period of one month from today failing which the amount shall carry interest at the rate of 9% p.m. The amount if any already paid shall be adjusted.

10. A copy of this order be circulated amongst Motor Accident Claims Tribunal through District Judges.

Certified copy, as per Rules.

Sd/-
Fakhruddin
Judge